IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1234 OF 2004

RAJANI RAMESH SAVE ...Petitioner.

V/s

SAFLA SHIVAJI APTE AND ANR ...Respondents.

Mr. S.V. Bhate for the petitioner.
Mr. P.N. Joshi for respondent No.1.

CORAM: V.M.KANADE,J.

DATE: 19th April 2005

P.C.:

1. Heard the learned Counsel for the petitioner and the learned counsel for respondent No.1.

2. Petitioner is challenging the order of issuance of process by the Chief Judicial Magistrate, Nashik on a complaint filed by respondent No.1 under section 138 of the Negotiable Instruments Act.

3. The complaint was filed by respondent No.1 under section 138 of the Negotiable Instruments Act and verification was recorded under section 200 of the Criminal Procedure Code on 11/4/2002. The verification, according to the petitioner, was made not by the complainant but her power of attorney holder. The application was filed by the accused for

recalling the process. The Magistrate, however, rejected the said application. Against the said order, Revision Application was filed by the accused in the Sessions Court. The Second Ad-hoc Additional Sessions Judge, Nashik, allowed the Revision Application filed by the petitioner herein and remanded the summary case to the Trial Court for proper compliance of section 200 of the Criminal Procedure Code by order dated 6/5/2004. Against both these orders passed by the lower courts, the petitioner has filed this petition.

4. The learned Counsel appearing on behalf of the petitioner has submitted that since the verification of the complaint was made by the special power of attorney holder of the complainant, no process could have been issued as the verification itself was defective. He submitted that the provisions of Negotiable Instruments Act were not complied with. It is submitted that Negotiable Instruments Act being a special statute, the provisions of the special law would prevail over the general law and the wording of section 142 clearly stipulated that the complainant alone could verify the contents of the complaint. In support of the said submission, the learned counsel relied on number of judgments of the Supreme Court and

various High Courts.

5. The learned Counsel appearing on behalf of respondent No.1 submitted that after the order was passed by the Sessions Court, the complaint has, thereafter, been verified by the complainant and, therefore, even assuming that there is a defect in the verification the same had been cured. He submitted that the petitioner was merely trying to protract the litigation. He submitted that the plea of the accused had been recorded and the complainant had led her evidence.

6. I am unable to accept the submissions made by the learned counsel for the petitioner. The defect, if any, in the verification had been cured as a result of the order which was passed by the Sessions Court which had allowed the Revision Application filed by the petitioner herein. Thus, the grievance, if any, of the petitioner does not survive. This is obviously an attempt to protract the litigation.

7. All questions raised in this petition are kept open. Trial Court to decide these questions on merits and in accordance with law after the parties have adduced the evidence in the trial court. Trial Court

is directed to decide the trial expeditiously and, in any case, within a period of three months.

8. With the above directions, Criminal Writ Petition is dismissed.

V.M. KANADE, J.